

The purpose of this review is to provide guidance on how Part III may be amended and what additional issues need to be addressed.

Black – Existing Regulations

Red – Questions

Blue – Code for reference

CHAPTER 60

VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT REGULATIONS

Part III

Local Programs

4VAC50-60-100. Applicability.

This part specifies technical criteria, minimum ordinance requirements, and administrative procedures for all localities operating local stormwater management programs.

- 1) What else does this section need to cover or explain?
- 2) Are there items in the Code of Virginia that need to be addressed in this section to add clarity.

Examples from the Code

- KEY AUTHORITY NOTES: The Stormwater Act specifies that a "Local stormwater management program" or "local program" means the various methods employed by a locality to manage the quality and quantity of runoff resulting from land disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, inspection, enforcement, and evaluation consistent with this article.
- 5. Cause investigations and inspections, or delegate authority to do so, to ensure compliance with any permits, conditions, policies, rules, regulations, rulings and orders which it may adopt, issue or establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance.
- 6. Adopt rules governing the procedure of the permit issuing authority with respect to: (i) hearings; (ii) the filing of reports; (iii) the issuance of permits and special orders; and (iv) all other matters relating to procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this section shall be by such means as the permit issuing authority may prescribe but must be consistent with the Administrative Process Act (§ 2.2-4000 et seq.).
- C. In the absence of the delegation of a stormwater management program to a locality, the Department will administer the responsibilities of this article within the given jurisdiction.
- D. The Department shall develop a model ordinance for establishing a local stormwater management program consistent with this article.
- E. Each locality that is required to or that elects to adopt and administer an approved local stormwater management program shall, by ordinance, establish a local stormwater

management program that may be administered in conjunction with a local MS4 program and a local erosion and sediment control program, which shall include, but is not limited to, the following:

1. Consistency with regulations adopted in accordance with provisions of this article;

2. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and

3. Provisions for the integration of locally adopted stormwater management programs with local erosion and sediment control, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing construction in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

- F. The Board shall delegate a local stormwater management program to a locality when it deems a program consistent with this article.
- G. Delegated localities may enter into agreements with soil and water conservation districts, adjacent localities, or other entities to carry out the responsibilities of this article.
- H. Localities that adopt a local stormwater management program shall have the authority to issue a consolidated stormwater management and erosion and sediment control permit that is consistent with the provisions of the Erosion and Sediment Control Law (§ 10.1-560 et seq.).
- § 10.1-603.4. Development of regulations.

The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for stormwater management programs in Virginia. The regulations shall:

1. Establish standards and procedures for delegating the authority for administering a stormwater management program to localities;

2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;

3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;

4. Require as a minimum the inclusion in local programs of certain administrative procedures which include, but are not limited to, specifying the time period within which a local government that has adopted a stormwater management program must grant permit approval, the conditions under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approved permit may be changed and requirements for inspection of approved projects;

4VAC50-60-110. Technical criteria for local programs.

A. All local stormwater management programs shall comply with the general technical criteria as outlined in 4VAC50-60-50.

B. All local stormwater management programs which contain provisions for stormwater runoff quality shall comply with 4VAC50-60-60. A locality may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria. A locality may opt to calculate actual watershed specific or locality wide values for the average land cover condition based upon:

1. Existing land use data at time of local Chesapeake Bay Preservation Act Program or department stormwater management program adoption, whichever was adopted first;
2. Watershed or locality size; and
3. Determination of equivalent values of impervious cover for nonurban land uses which contribute nonpoint source pollution, such as agriculture, forest, etc.

C. All local stormwater management programs which contain provisions for stream channel erosion shall comply with 4VAC50-60-70.

D. All local stormwater management programs must contain provisions for flooding and shall comply with 4VAC50-60-80.

E. All local stormwater management programs which contain provisions for watershed or regional stormwater management plans shall comply with 4VAC50-60-110.

F. A locality that has adopted more stringent requirements or implemented a regional (watershed-wide) stormwater management plan may request, in writing, that the department consider these requirements in its review of state projects within that locality.

G. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.

TAC or staff Questions:

- 3) Can this section be condensed to include reference to Part II and a few of these statements?
- 4) Any other items to include?
- 5) (staff item) B. The permit-issuing authority shall require compliance with subdivision 19 of 4VAC50-30-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 4 (§10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia. [Existing language from Part II]

Possible Key Minimum Components of a Local Stormwater Program

<u>Category</u>	<u>Section where the category is addressed</u>
Administration	4VAC50-60-120A – local ordinance requirement 4VAC50-60-120B – DCR local program review
Plan Review	4VAC50-60-130
Maintenance	4VAC50-60-150
Inspections	4VAC50-60-150
Enforcement	not addressed in Part III
Public Outreach & Education	not addressed in Part III

- 6) Are above the key components?
- 7) Are there other subsections of the key components above?
- 8) Are the components of a DCR administered program the same or similar?

4VAC50-60-120. Requirements for local program and ordinance.

A. At a minimum, the local stormwater management program and implementing ordinance shall meet the following:

1. The ordinance shall identify the plan-approving authority and other positions of authority within the program, and shall include the regulations and technical criteria to be used in the program.

2. The ordinance shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land development projects. The party responsible for conducting inspections shall be identified. The local program authority shall maintain, either on-site or in local program files, a copy of the approved plan and a record of all inspections for each land development project.

B. The department shall periodically review each locality's stormwater management program, implementing ordinance, and amendments. Subsequent to this review, the department shall determine if the program and ordinance are consistent with the state stormwater management regulations and notify the locality of its findings. To the maximum extent practicable the department will coordinate the reviews with other local government program reviews to avoid redundancy. The review of a local program shall consist of the following:

1. A personal interview between department staff and the local program administrator or his designee;

2. A review of the local ordinance and other applicable documents;

3. A review of plans approved by the locality and consistency of application;

4. An inspection of regulated activities; and

5. A review of enforcement actions.

C. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.

TAC or staff Questions:

Ordinances

- 9) What party is responsible for conducting inspections?
- 10) Model ordinance based on local adoption of program. Do need for those who don't – have that they must do something (coordination of regional) – define state procedures for those when don't have local delegation.

Record Keeping

- 11) Where are copy of the approved plan and a record of all inspections for each land development project kept? (short-term and long-term)
- 12) How long to keep records? (Records must be kept forever, but where, how, and what?)

Local Program Review

- 13) Should 120 B become its own section titled Department program reviews?
- 14) Should the department shall periodically review each locality's stormwater management program, implementing ordinance, and amendments?
- 15) Should the review include program and ordinance consistent evaluations with the state stormwater management regulations and notify the locality of its findings.
- 16) Should there be a more frequent audit of local programs with deficiencies corrected within a certain time period?

- 17) What does the program include, and what are the expectations and criteria for the annual review?
- 18) Should we include monitoring data as part of an audit?
- 19) Coordinate local review with the Erosion and Sediment Control Program and the Chesapeake Bay Act – coordinate all programs as if they were one program.

Delegation Authorization

- 20) In your opinion, what steps need to be taken to delegate program to a locality?
- 21) What is impact on this program if locality has an inconsistent E&S program?
- 22) Prerequisite to a locality delegation – have a rating on the locality's E&S program.

State administration of a local program

- 23) If a locality decides not to adopt a program, what is the program that DCR will administer? Will it be the same as the minimum or will it be different?
- 24) If locality does not opt in, does state administer same program (being developed for localities) for localities? If not, what should be different?
- 25) What should be in local ordinance should they choose not to opt in?

Roles of other parties

- 26) What are roles, if any, of Soil & Water Conservation Districts if localities adopt own program?
- 27) If a locality chooses not to adopt a program, should DCR consider delegation to a SWCD?

General

- 28) Who permits a local government's project?
- 29) Are localities with a limited number of land disturbances per year handled differently?
- 30) Account for topographic and development difference across the Commonwealth.
- 31) Recognition of rapid development change and low impact vs. no impact on development.
- 32) Need a level playing field in jurisdictions within a watershed.

4VAC50-60-130. Administrative procedures: stormwater management plans.

A. Localities shall approve or disapprove stormwater management plans according to the following:

1. A maximum of 60 calendar days from the day a complete stormwater management plan is accepted for review will be allowed for the review of the plan. During the 60-day review period, the locality shall either approve or disapprove the plan and communicate its decision to the applicant in writing. Approval or denial shall be based on the plan's compliance with the locality's stormwater management program.

2. A disapproval of a plan shall contain the reasons for disapproval.

B. Each plan approved by a locality shall be subject to the following conditions:

1. The applicant shall comply with all applicable requirements of the approved plan, the local program, this chapter and the Act, and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.

2. The land development project shall be conducted only within the area specified in the approved plan.

3. The locality shall be allowed, after giving notice to the owner, occupier or operator of the land development project, to conduct periodic inspections of the project.

4. The person responsible for implementing the approved plan shall conduct monitoring and submit reports as the locality may require to ensure compliance with the approved plan and to determine whether the plan provides effective stormwater management.

5. No changes may be made to an approved plan without review and written approval by the locality.

TAC or staff Questions:

General

- 33) Does “localities” need to be changed to “permit issuing authority” or other terminology to reflect DCR’s potential program administrative role?

Plan review

- 34) As part of an Administrative matrix is there a minimum staffing level requirement for plan review staff?
- 35) How to handle incomplete plans?
- 36) How long to review?
- 37) Discrepancy between localities 60 day & 30 day—plan review; E&S 45 & state 60.
- 38) What are the general procedures for submission and approval of plans?
- 39) Consider agreement in lieu of plan for 1 to 5 acre areas – need to be addressed and maintained?
- 40) Do the Plan developers & reviewers need to be an engineer?
- 41) Changing approved Stormwater plans in the field?

Permit issuance

- 42) Do we need to work in a subsection on permit issuance procedures?
- 43) How will permits be issued?
- 44) What permits will be issued and are they integrated at all?
- 45) How does the General permit registration statement fit in?
- 46) Is there a sequencing of permit issuance?
- 47) How are disapprovals handled?
- 48) How are permit revocations handled?

- 49) How will permit tracking be accomplished?
- 50) Do we need criteria for distinguishing between general and individual permits?
- 51) Who handles individual permits?
- 52) Evidence of approval of all necessary permits shall be presented. [Existing language from Part II]

Reporting

- 53) What reports are required and how might it work?
- 54) How do you see reporting being handled from locality to state?

Staffing

- 55) What might be considered “sufficient” staff?

4VAC50-60-140. Administrative procedures: exceptions.

A. A request for an exception shall be submitted, in writing, to the locality. An exception from the stormwater management regulations may be granted, provided that: (i) exceptions to the criteria are the minimum necessary to afford relief and (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved.

B. Economic hardship is not sufficient reason to grant an exception from the requirements of this chapter.

TAC or staff Questions:

Exceptions/ variances

- 56) What are the exceptions applicable to, the plan review, the General Permit requirements, etc.?
- 57) Define exceptions and make sure they are limited

Stringency

- 58) Does this section or another also need to address stringency?
- 59) Where the local program is not adopted, the state is running the local program. How does being more stringent apply to that because there has been no local ordinance adopted by a locality. How does that apply to a state run program? What about the review of the state's operation of a local program?
- 60) Need to insert "satisfies 10.1-603.7 (scientific basis)"
- 61) D. In addition to subsections B and C of this section permit-issuing authorities, by local ordinance may, or the board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include, but are not limited to, the following:
 1. Criteria and procedures for channel analysis and classification.
 2. Procedures for channel data collection.
 3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.
 4. Criteria for the selection of proposed natural or man-made channel linings.

[Existing language from Part II]

- 62) C. The permit-issuing authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land-disturbing activities. Therefore, in lieu of the reduction of the two-year post-developed peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm. [Existing language from Part II]
- 63) C. In lieu of subsection B of this section, localities may, by ordinance, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors or other downstream conveyance factors as appropriate. [Existing language from Part II]

- **Associated Examples from the Code:**
§ 10.1-603.7. Authorization for more stringent ordinances.

A. Localities are authorized to adopt more stringent stormwater management ordinances than those necessary to ensure compliance with the Board's minimum regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of a MS4 permit or a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances a public hearing is held after giving due notice.

B. Any local stormwater management program in existence before January 1, 2005 that contains more stringent provisions than this article shall be exempt from the requirements of subsection A.

§ 10.1-603.4. Development of regulations.

7. Require that stormwater management programs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. Any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined in any regulations promulgated pursuant to this section, or any ordinances adopted pursuant to § 10.1-603.3 or 10.1-603.7;

4VAC50-60-150. Administrative procedures: maintenance and inspections.

A. Responsibility for the operation and maintenance of stormwater management facilities, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. In the case of developments where lots are to be sold, permanent arrangements satisfactory to the locality shall be made to ensure continued performance of this chapter.

C. A schedule of maintenance inspections shall be incorporated into the local ordinance. Ordinances shall provide that in cases where maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the locality has the authority to perform the work and to recover the costs from the owner.

D. Localities may require right-of-entry agreements or easements from the applicant for purposes of inspection and maintenance.

E. Periodic inspections are required for all stormwater management facilities. Localities shall either:

1. Provide for inspection of stormwater management facilities on an annual basis; or
2. Establish an alternative inspection program which ensures that stormwater management facilities are functioning as intended. Any alternative inspection program shall be:
 - a. Established in writing;
 - b. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and
 - c. Documented by inspection records.

F. During construction of the stormwater management facilities, localities shall make inspections on a regular basis.

G. Inspection reports shall be maintained as part of a land development project file.

TAC or staff Questions:

BMP Maintenance

- 64) In accordance with the Code, how do we require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff?
- 65) How are LID structures handled?
- 66) Who is responsible?
- 67) For how long?
- 68) How is it funded (service fees, bonds, etc.)?
- 69) 50-60-150B – should the state “ensure continued performance of improved practice?”
- 70) Long term inspection of BMPs.
- 71) GPS locations of BMPs.
- 72) BMPs in series.

- 73) Converting basin from E&S to SW before stabilization.
- 74) I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan. [Existing language from Part II]
- 75) All BMPs installed need maintenance agreements; Specify who is responsible; funding for maintenance (ability to charge/Cole's bill/ bonding); state \$\$'s (how to handle); BMPs may have a range; plan approval dependant on developer demonstrating long-term maintenance; Channels between BMPS – adequacy.

Certification Program

- 76) Is there need for certification program such as one for E&S for local (District/ PDC) staff? If so what might it look like and work?

Easements

- 77) Storm drainage easements shall be recorded to identify the locations of integrated management practices on lots or parcels. The property owner shall not remove or structurally alter integrated management practices without prior written approval from the program administrator.

Inspections

- 78) How will monitoring and inspections of land development projects work?
- 79) Who conducts it? (contractor, landowner, whoever?)
- 80) As part of an Administrative matrix is there a minimum staffing level requirement for conducting inspections?
- 81) How do you see inspections being handled?
- 82) How much time after a rain event?
- 83) Frequency of inspections?
- 84) How to prioritize sites?
- 85) Can we give building inspectors the ability to change inadequate plans in the field? How would it work?
- 86) What are the minimum requirements for inspection records?
- 87) What records need to be kept? How long?
- 88) How does that relate to 50-60-150 (G) whose file and what belongs in that file vs. the other reports that are done?

OTHER SECTIONS/ ISSUES FOR DISCUSSION

TAC or staff Questions:

Enforcement

- 89) How will enforcement being handled?
- 90) What is tracking process for enforcement actions?
- 91) Clarify enforcement, issuing, policing, revoking and how the locality polices self.
- 92) What teeth do localities receive for enforcement
- 93) Can a locality enforce against itself? How does sovereign immunity work under the Dillon rule?
- 94) Authority for orders & administrative actions; can not go to the Courts on all actions

Penalties

- 95) Enforcement needs to have effective penalties for non-compliance.
- 96) How are fines handled?
- 97) Board develop a schedule of civil penalties.

Fee Collection

- 98) How are fees for E&S being collected now? How should they be collected?
- 99) Identify in a local program that the fees will be used to fund the requirements of a local program.
- 100) Need administrative procedures for the local program – who to collect the fees, how they can be spent, how to submit to DCR, etc.

Public Outreach & Education

- 101) What might this component include?

General

- 102) Who handles Federal & State agency projects? — DCR
- 103) How are utility & linear projects addressed?

Regional Plans

- 104) If developed, a regional plan shall, at a minimum, address the following:
 1. The specific stormwater management issues within the targeted watersheds.
 2. The technical criteria in 4VAC50-60-40 through 4VAC50-60-80 as needed based on subdivision 1 of this section.
 3. The implications of any local comprehensive plans, zoning requirements, local ordinances pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and other planning documents.
 4. Opportunities for financing a watershed plan through cost sharing with neighboring agencies or localities, implementation of regional stormwater utility fees, etc.
 5. Maintenance of the selected stormwater management facilities.
 6. Future expansion of the selected stormwater management facilities in the event that development exceeds the anticipated level. [Existing language from Part II]